

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

QUINCY D.,

Claimant,

vs.

NORTH LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2010110067

**DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on August 29, 2011, in Lancaster, California. Quincy D. (claimant) was represented by Kimomeka B., his aunt and foster caregiver, who is his authorized representative.<sup>1</sup> North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by its Contract Officer, Rhonda Campbell.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on August 29, 2011.

**ISSUE**

Does Claimant have a developmental disability which makes him eligible for regional center services?

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<sup>1</sup> Claimant's and his representative's initials are used, in lieu of their last names, to protect their privacy.

## FACTUAL FINDINGS

1. Claimant is a 6-year-old male (born October 15, 2004). He claims to be eligible for regional center services based upon a diagnosis of autism. (Testimony of Kimomeka B.; Exhibit 3.)

2. Claimant lives with his aunt, who is his foster caregiver. (Testimony of Kimomeka B.; Exhibit 3.)

3. Claimant is suspected to have Fetal Alcohol Syndrome. Claimant has severe esotropia (nearsightedness) and must wear glasses. However, he does not like wearing his glasses, and has broken or lost many pairs. He has asthma and takes medication to control this condition. (Testimony of Kimomeka B.; Exhibits 3 and 6.)

4(a). Following an observation by Claimant's school district's Department for Students with Visual Impairments in 2009, the evaluator concluded that claimant's medically identified visual diagnosis did not affect him educationally. The observations included the following summary:

[Claimant] was observed on two different occasions in two different environments. He was first observed in a busy general education kindergarten class and then he was observed in a Special Day Pre-school class. Both times he did not have his glasses because they had been misplaced or broken.

Observation #1 (9/23/09) [general education class]: [Claimant] was observed while participating in a reading activity at the carpet with his teacher . . . He was very distracted and fidgety while the teacher read a book to the students. His teacher called his attention numerous times yet with no success. [She] showed the children the pictures in the book as she read but did not bring [the] book closer to [claimant] to give him a chance to look at it.

After circle time the children went to their desks and completed a letter worksheet. [Claimant] again distracted himself and the other children by playing with his box of crayons and dropping them all on the floor. When directed to start the worksheet he continued to distract himself with other things around him. It was not until he was separated from his group and taken to another table that he focused on what he was doing. Visually he accessed the worksheet at a distance of 7-8 inches and traced the letters with no difficulty. He accessed his crayon box and the colors he searched out to find successfully. When asked by the examiner if he saw a box on the page he stated yes and proceeded to trace the "I" on the page with no difficulty.

He navigated around the room from the carpet, to his desk, to the back table and to the back of the room with no difficulty and without bumping into any obstacles.

Observation #2 (10/14/09) [Special Day Pre-school Class]: [Claimant] was observed on the computer purposefully clicking on the screen to sort different animals and putting them in their respective “bins.” He was at a comfortable distance from the screen (10 inches) and accessed the mouse perfectly. He quit the program at his teacher’s request with no difficulty at all.

At the classroom “library” he picked out books and held them right side up. He flipped the pages and looked at the pictures at the distance of 7-8 inches. He identified the animals in the pictures correctly even though some of the pictures were camouflaged into the page. He had to be directed to continue looking at books after the newness of the activity wore off.

When called to go to recess, he acquired his jacket, put it on, although he needed a little help and ran out to the swing area very anxious to play. He navigated the kindergarten play area with ease and without difficulty.

Classroom teacher comments: [Claimant] can visually access all the materials in the class. He’s the only student doing Kindergarten work and he sees the worksheets with no difficulties, whatsoever. (Exhibit 4.)

4(b). Despite the conclusion in the 2009 assessment, claimant has been receiving special education services under the category of “Other Health Impairment – Non Severe.” (Exhibit 7.)

5(a). In November 2009, when claimant appeared at NLACRC for a social assessment, the assessor observed the following:

[Claimant] smiled at this assessor and greeted appropriately. He could remain on task for less than five minutes. He scribbled on a piece of paper in an up and down motion without any clear shapes. He was able to copy the number five that was written on a piece of paper.

[Claimant] walked around the office and attempted to touch everything on the desk and table. He would repeatedly ask what objects were.

[Claimant] does hold pictures close to his eyes in order to focus.

[Claimant] is affectionate and stood close to this assessor. He began to hug his assessor and hug her arm. He would smile while holding this examiner’s arm. [Claimant] also engaged in consistent eye contact when communicating with this examiner. (Exhibit 5.)

5(b). Regarding his then-current level of functioning, the assessor noted the following responses provided by his aunt:

Self-Care:

[Claimant] will attempt to complete all of his self care needs but needs verbal prompting. [Claimant] can wash his hands and face. He likes to brush his teeth. Recently [claimant] began to bathe independently and needs assistance with washing appropriately. [Claimant] is unable to dress himself independently and will put on his clothes backwards. He needs assistance with fastens, buttons and zippers. He also requires assistance with putting on his shoes and tying them. . . . [Claimant] can feed himself with a spoon with some spillage. He can drink from a cup without spillage. . . . [Claimant] is not aware of safety. He will run in the middle of the street and has no fear of strangers. When he is hurt, he will seek aid from his aunt. [Claimant] can put his toys away when asked.

[¶] . . . [¶]

Social/Behavioral:

[Claimant's aunt] reported that when [claimant] was initially placed with her, he preferred to be alone. Yet within a year he engaged in play with other children. [Claimant] is a friendly child and can initiate friendships quickly. . . . [Claimant's aunt] reported that [claimant] does not understand emotions. He does not understand or feel remorseful if he hurts someone or hurts someone's feelings. . . . [Claimant] can play imaginatively and play appropriately with his toys. However, he does destroy his toys. [Claimant] also placed [his] toys in the chimney and put them on fire. [Claimant] is affectionate towards his family members. He was not aggressive, yet in the past two weeks there have been more aggressive behaviors. . . . [Claimant's aunt] reported that [claimant] does not engage in repetitive or odd behaviors, but he recently made holes in the wall with his fingers. [Claimant] does not like changes in his routines or changes in the home. Yet, [claimant's aunt] believes that this stems from his poor eyesight and he becomes confused when items are moved. . . .

Communication:

[Claimant] is verbal. He can speak in complete sentences. He is able to understand non-verbal [cues]. His articulation is clear. [Claimant] can engage in a simple reciprocal conversation with consistent eye contact. [Claimant] is able to speak about past experiences. He can follow a one step direction with repetition. (Exhibit 5.)

6(a). On December 18, 2009, Robert J. Rome, Ph.D., licensed psychologist, conducted a psychological evaluation of claimant. The assessment included a review of records, an interview with claimant and his aunt, observations of claimant, and administration of diagnostic tools for measuring cognitive functioning, adaptive skills and for ascertaining characteristics of autism. (Exhibit 9.)

6(b). Dr. Rome observed that claimant repeatedly got up from his chair and had to be prompted to stay on task and to stay seated during transitions between tasks. According to Dr. Rome, claimant's "attention span often did not provide him with the ability to attend for an entire task. With much prompting and guidance, he was able to complete the tasks administered during this testing to what seemed to be the best of his ability." (Exhibit 9.)

6(c). To assess claimant's cognitive functioning, Dr. Rome administered the Wechsler Preschool and Primary Scale of Intelligence – Third Edition (WPPSI-III). Claimant obtained Full Scale IQ score of 80, with his Verbal IQ at 86 and his Performance IQ at 77. According to Dr. Rome, claimant's intellectual functioning was at the low end of the low average range. (Exhibit 9.)

6(d). In the area of adaptive functioning, Dr. Rome administered the Vineland Adaptive Behavior Scales, Second Edition (VABS-II); claimant's aunt provided the responses necessary for the completion of this test. Claimant's VABS-II scores placed him in the low average range in the Communication (standard score 91) domain, in the borderline range in the Daily Living (standard score 72) and Motor Skills (standard score 75) domains, and in the mildly deficient range in the Socialization (standard score 65) domain. (Exhibit 9.)

6(e). Dr. Rome noted that claimant scored in the non-autistic range on the Autism Diagnostic Observation Schedule (Module 3) and on the Autism Diagnostic Interview-Revised. (Exhibit 9.)

6(f). Dr. Rome's diagnostic impressions were: Adjustment Disorder with Mixed Disturbance of Emotions and Conduct; Attention-Deficit / Hyperactivity Disorder, Combined Type. (Exhibit 9.)

7. On January 19, 2010, NLACRC sent a letter to claimant's aunt, informing her that they had determined claimant was not eligible for regional center services. On October 20, 2010, claimant's aunt requested a fair hearing. (Exhibit 1.)

8. On April 20 and June 9, 2011, claimant was assessed at the Children's Bureau in Lancaster, California, and was diagnosed with Attention-Deficit/Hyperactivity Disorder, Pervasive Developmental Disorder (PDD-NOS) and Disruptive Behavior Disorder. The Children's Bureau did not provide any details regarding how these diagnoses were reached. (Exhibit A.)

9. On August 19, 2011, John Lamont, Ph.D., spoke to claimant's former teacher after attempting to schedule a school observation for which claimant was absent. According to the teacher, claimant made eye contact when speaking, laughed with others, shared interests and played with the other children. He was friendly and liked to be hugged. He did not have encompassing preoccupations or sensory issues. The teacher did comment that claimant was overactive and that he could also be aggressive. (Exhibit 14.)

10. At the fair hearing, Heike Ballmaier, Psy.D., testified credibly on behalf of the Service Agency. According to Dr. Ballmaier's review of the records, claimant does not meet the criteria for a diagnosis of Autistic Disorder. She further pointed out that a diagnosis of PDD-NOS is not a qualifying condition under the Lanterman Act. Dr. Ballmaier further opined that claimant does not have mental retardation, since his intellectual functioning is in the low average range. He also does not have a condition similar to mental retardation or requiring treatment similar to persons with mental retardation. (Testimony of Heike Ballmaier, Psy.D.)

11. Claimant's aunt testified credibly on claimant's behalf. She noted that claimant is affectionate and hugs everyone, but that he does not look people in the eye. He does demonstrate remorse. Additionally, he often does not play "appropriately"; for example, at the park, he will reject playing on the swings and slides and will instead play with the bushes. Claimant's aunt agrees that claimant does not have mental retardation. However, she believes he is on the autistic spectrum. (Testimony of Kimomeka B.)

12. The evidence presented at the fair hearing failed to establish that claimant suffers from Autistic Disorder.

13. The evidence presented at the fair hearing did not establish that claimant suffers from a condition similar to mental retardation or requiring treatment similar to persons with mental retardation.

## LEGAL CONCLUSIONS

1. Claimant did not establish that he suffers from a developmental disability entitling him to Regional Center services. (Factual Findings 1 through 13.)

2. Throughout the applicable statutes and regulations (Welf. & Inst. Code §§ 4700 - 4716, and Cal. Code Regs., tit. 17, §§ 50900 - 50964), the state level fair hearing is referred to as an appeal of the Service Agency's decision. Where a claimant seeks to establish his eligibility for services, the burden is on the appealing claimant to demonstrate that the Service Agency's decision is incorrect. Claimant has not met his burden of proof in this case.

3. In order to be eligible for regional center services, a claimant must have a qualifying developmental disability. As applicable to this case, Welfare and Institutions Code section 4512 defines “developmental disability” as:

[A] disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual, and includes mental retardation, cerebral palsy, epilepsy, autism, and disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

4. To prove the existence of a developmental disability within the meaning of Welfare and Institutions Code section 4512, a claimant must show that he has a “substantial disability.” In assessing what constitutes a “substantial disability” within the meaning of section 4512, the following provisions are helpful:

California Code of Regulations, title 17, section 54001 states, in pertinent part:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

In California Code of Regulations, title 17, section 54002, the term “cognitive” is defined as:

[T]he ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly, and to profit from experience.

5(a). In addition to proving a “substantial disability,” a claimant must show that his disability fits into one of the five categories of eligibility set forth in Welfare and Institutions Code section 4512. The first four categories are specified as: mental retardation, epilepsy, autism and cerebral palsy. The fifth and last category of eligibility is listed as “Disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.” (Welf. & Inst. Code, § 4512.) This category is not further defined by statute or regulation.

5(b). Whereas the first four categories of eligibility are very specific, the disabling conditions under this residual fifth category are intentionally broad to encompass unspecified conditions and disorders. However, this broad language is not intended to be a catchall, requiring unlimited access for all persons with some form of learning or behavioral disability. There are many persons with sub-average functioning and impaired adaptive behavior; under the Lanterman Act, the Service Agency does not have a duty to serve all of them.

5(c). While the Legislature did not define the fifth category, it did require that the qualifying condition be “closely related” (Welf. & Inst. Code, § 4512) or “similar” (Cal. Code. Regs., tit. 17, § 54000) to mental retardation or “require treatment similar to that required for mentally retarded individuals.” (Welf. & Inst. Code, § 4512.) The definitive characteristics of mental retardation include a significant degree of cognitive and adaptive deficits. Thus, to be “closely related” or “similar” to mental retardation, there must be a manifestation of cognitive and/or adaptive deficits which render that individual’s disability like that of a person with mental retardation. However, this does not require strict replication of all of the cognitive and adaptive criteria typically utilized when establishing eligibility due to mental retardation (e.g., reliance on I.Q. scores). If this were so, the fifth category would be redundant. Eligibility under this category requires an analysis of the quality of a claimant’s cognitive and adaptive functioning and a determination of whether the effect on his/her performance renders him/her like a person with mental retardation. Furthermore, determining whether a claimant’s condition “requires treatment similar to that required for mentally retarded individuals” is not a simple exercise of enumerating the services provided and finding that a claimant would benefit from them. Many people could benefit from the types of services offered by regional centers (e.g., counseling, vocational training or living skills training). The criterion is not whether someone would benefit. Rather, it is whether someone’s condition *requires* such treatment.

6. In order to establish eligibility, a claimant’s substantial disability must not be solely caused by an excluded condition. The statutory and regulatory definitions of “developmental disability” (Welf. & Inst. Code, § 4512 and Cal. Code. Regs., tit. 17, § 54000) exclude conditions that are *solely* physical in nature. California Code of Regulations, title 17, section 54000, also excludes conditions that are *solely* psychiatric disorders or *solely* learning disabilities. Therefore, a person with a “dual diagnosis,” that is, a developmental disability coupled with either a psychiatric disorder, a physical disorder, or a learning disability, could still be eligible for services. However, someone whose conditions originate from just the excluded categories (psychiatric disorder, physical disorder, or

learning disability, alone or in some combination), and who does *not* have a developmental disability would not be eligible.

7. Although claimant maintains that he is eligible for regional center services, he currently does not have any of the qualifying diagnoses.

8. The DSM-IV-TR discusses autism in the section entitled “Pervasive Developmental Disorders.” (DSM-IV-TR, pp. 69 - 84.) The five “Pervasive Developmental Disorders” identified in the DSM-IV-TR are Autistic Disorder, Rett’s Disorder, Childhood Disintegrative Disorder, Asperger’s Disorder, and PDD-NOS. The DSM-IV- TR, section 299.00 states:

The essential features of Autistic Disorder are the presence of markedly abnormal or impaired development in social interaction and communication and markedly restricted repertoire of activity and interests. Manifestations of the disorder vary greatly depending on the developmental level and chronological age of the individual. Autistic Disorder is sometimes referred to as *early infantile autism*, *childhood autism*, or *Kanner’s autism*. (Emphasis in original.)

(*Id.* at p. 70.)

9. The DSM-IV-TR lists criteria which must be met to provide a specific diagnosis of an Autistic Disorder, as follows:

- A. A total of six (or more) items from (1), (2) and (3), with at least two from (1), and one each from (2) and (3):
  - (1) qualitative impairment in social interaction, as manifested by at least two of the following:
    - (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
    - (b) failure to develop peer relationships appropriate to developmental level
    - (c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people (e.g., by a lack of showing, bringing, or pointing out objects of interest)
    - (d) lack of social or emotional reciprocity

- (2) qualitative impairments in communication as manifested by at least one of the following:
    - (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gestures or mime)
    - (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
    - (c) stereotyped and repetitive use of language or idiosyncratic language
    - (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level
  - (3) restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one of the following:
    - (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
    - (b) apparently inflexible adherence to specific, nonfunctional routines or rituals.
    - (c) stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)
    - (d) persistent preoccupation with parts of objects
- B. Delays or abnormal functioning in at least one of the following areas, with onset prior to age 3 years: (1) social interaction, (2) language as used in communication, or (3) symbolic or imaginative play.
- C. The disturbance causes clinically significant impairment in social, occupational, or other important areas of functioning.

(*Id.* at p. 75.)

10. In this case, claimant alleges that he should be eligible for regional center services under the qualifying disability of autism. However, he has not been diagnosed with Autistic Disorder. According to the DSM-IV-TR, specific clinical criteria must be evident to diagnose Autistic Disorder. While Claimant does manifest some mild impairment in his social skills, no psychologist specifically found that he satisfied the required number of elements within the autism criteria of the DSM-IV-TR to diagnose him with Autistic Disorder. Consequently, Claimant has not established that he is eligible for regional center services under the diagnosis of autism.

11. Although claimant does demonstrate some mild deficits in adaptive functioning (including social skills), the evidence did not demonstrate that he presents as a person suffering from a condition similar to Mental Retardation. Moreover, the evidence did not establish that claimant requires treatment similar to that required for mentally retarded individuals. Based on the foregoing, claimant has not met his burden of proof that he falls under the fifth category of eligibility.

12. The weight of the evidence did not support a finding that claimant is eligible to receive regional center services.

#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's appeal of the Service Agency's determination that he is not eligible for regional center services is denied.

DATED: September 9, 2011

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

**This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**